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9 **BEFORE THE**
STATE BOARD OF OPTOMETRY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. CC 2011 129

12 **SALIMAH MOEZ PIRMOHAMED, O.D.**
13 **8730 Costa Verde Blvd., #2458**
San Diego, CA 92122

ACCUSATION

14 **Optometrist License No. 13918**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 2. On or about May 16, 2010, the State Board of Optometry issued Optometrist License
22 Number 13918 to Salimah Moez Pirmohamed, O.D. (Respondent). The Optometrist License was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the State Board of Optometry (Board), Department
27 of Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 3090 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

9. Section 3110 of the Code states:

The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

....

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1516, states:

(a) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

....

11. California Code of Regulations, title 16, section 1517 states:

For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her certificate of registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) Any violation of the provisions of Article 2, Chapter 1, Division 2 of the Code (Sections 525 et seq. of the Code).

(b) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the Code (Sections 650 et. seq. of the Code) except Sections 651.4 and 654.

(c) Any violation of the provisions of Chapter 5.4, Division 2 of the Code (Sections 2540 et seq. of the Code).

(d) Any violation of the provisions of Chapter 7, Division 2 of the Code (Sections 3000 et seq. of the Code).

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COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(March 7, 2012 Criminal Conviction for Driving With Blood Alcohol Level of 0.08% or More on December 14, 2011)

13. Respondent is subject to disciplinary action under sections 490 and 3110, subdivision (k), in that Respondent was convicted of a crime that is substantially related to the qualifications, functions or duties of a licensed optometrist as follows:

14. On or about March 7, 2012, in the Superior Court of California, County of San Diego, Central Division, in the matter entitled *People v. Salimah Moez Pirmohamed*, Case No. M143499, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152(b) (driving with a blood alcohol content (BAC) of 0.08% or more [0.14% BAC]), a misdemeanor. Pursuant to a plea bargain, charges of violating Vehicle Code sections 23152(a) (DUI) and 12500 (unlicensed driver), were dismissed.

15. As a result of the conviction, the Court placed Respondent on five years summary probation and ordered Respondent to violate no laws, pay various fines and fees, and enroll in and complete a First Offender Program and a MAAD Impact Panel.

16. The circumstances surrounding the conviction are that on December 14, 2011, at approximately 12:00 a.m., California Highway Patrol Officers, while on routine patrol, were stopped on the 6th Avenue on ramp to SR-163 northbound in San Diego, California. Officers were providing traffic control for a large pothole on the freeway and their patrol vehicle's overhead emergency lights were activated. Officers observed Respondent's vehicle traveling at a high rate of speed, then brake abruptly as it neared slower moving vehicles. Officers followed Respondent's vehicle, which was traveling at approximately 70 mph, and observed the vehicle

1 drifting from side to side. Officers caught up to the vehicle as it approached Friars Road and
2 activated their overhead emergency lights. Respondent pulled over on the right shoulder just
3 south of Genesee Avenue. When officers made contact with Respondent, they detected a strong
4 odor of an alcoholic beverage emitting from within Respondent's vehicle. Officers noticed
5 Respondent's speech was slurred and her eyes were watery. Respondent told officers she
6 consumed wine at approximately 9:00 p.m. that evening and that she was the designated driver.

7 Respondent handed officers a Virginia driver's license. Officers instructed Respondent to exit
8 her vehicle and she complied. Officers noticed that Respondent had difficulty maintaining her
9 balance on the shoulder of the freeway. Officers administered field sobriety tests which
10 Respondent failed. Respondent declined to blow into a preliminary alcohol screening device
11 while at the scene. Officers placed Respondent under arrest for driving under the influence of
12 alcohol and transported her to the San Diego CHP office where she performed breath tests at
13 0058 and 0101 hours, with results of 0.145% and 0.152% BAC, respectively. Respondent was
14 transported to the Las Colinas Women's Detention Facility.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct - Use of Alcohol in a Manner Dangerous to Self or Others)

17 17. Respondent is subject to disciplinary action under Code section 3110, subdivision (I),
18 in that she used alcoholic beverages to an extent or in a manner dangerous to herself, other
19 persons, or the public, as is more fully detailed in paragraphs 13 through 16, above, which are
20 incorporated here by reference.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the State Board of Optometry issue a decision:

24 1. Revoking or suspending Optometrist License Number 13918, issued to Salimah Moez
25 Pirmohamed, O.D.

26 2. Ordering Salimah Moez Pirmohamed, O.D. to pay the State Board of Optometry the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

1 3. Taking such other and further action as deemed necessary and proper.

2
3 DATED:

August 29, 2012 *Mona Maggio*

4 MONA MAGGIO
5 Executive Officer
6 State Board of Optometry
7 Department of Consumer Affairs
8 State of California
9 Complainant

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